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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MANUEL LAVARIAS et al.,

Plaintiffs and Appellants,

v.

TOYOTA MOTOR CREDIT
CORPORATION,

Defendant and Respondent.

D041665

D041995

(Super. Ct. No. GIC793757)

CONSOLIDATED APPEALS from a judgment and postjudgment order of the Superior Court of San Diego County, Linda B. Quinn, Judge. Judgment reversed with directions; order awarding attorney fees vacated.

Following repossession of their leased vehicle, appellants Manuel Lavarias and Emily Lavarias sued Toyota Motor Credit Corporation (TMCC) under the Unfair Competition Law (UCL; Bus. & Prof. Code, §§ 17200 et seq.). In a single cause of action, appellants alleged TMCC's post-repossession notice and other actions taken by

TMCC violated the California Vehicle Leasing Act (VLA; Civ. Code, §§ 2985.7, et seq.),¹ and the Robbins-Rosenthal Fair Debt Collection Practices Act (Rosenthal Act; §§ 1788, et seq.). The superior court sustained TMCC's demurrer to appellant's complaint without leave to amend on the sole ground TMCC's post-repossession notice complied with the VLA and later granted TMCC attorney fees under that statute.

Appellants contend: (1) the superior court erred because TMCC's demurrer did not dispose of their entire cause of action; (2) appellants sufficiently pleaded TMCC's post-repossession notice was unlawful within the meaning of the UCL; (3) the court abused its discretion by failing to grant leave to amend their complaint; and (4) the attorney fee award is alternatively moot or improper because their cause of action was not based entirely on the VLA. Having liberally construed appellants' allegations, we agree TMCC's demurrer only challenged a portion of appellants' cause of action and that the demurrer should have been overruled on that basis. Accordingly, we reverse the judgment and vacate the order granting TMCC attorney fees under the VLA.

FACTUAL AND PROCEDURAL BACKGROUND

Our factual recitation is based on the material facts pleaded by appellants and exhibits incorporated by reference in the complaint. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505.)

Appellants leased a Lexus automobile with TMCC and fell behind in their lease payments. In May 2002, TMCC repossessed the vehicle. Thereafter, TMCC sent

¹ All statutory references are to the Civil Code unless otherwise specified.

appellants its standard preprinted and computer generated form entitled "Rights of Defaulting Parties – Lease" (the Notice) stating, among other things, that appellants could get their vehicle back if they purchased it for an identified "Gross Early Termination Amount/Purchase Price" within 20 days from the date of the Notice. The Notice broke that sum down as follows:

"Unpaid Gross Lease Balance	\$35,075.95
"Less: Unearned Rent Charge	\$1,763.38
"Subtotal (Adjusted Lease Balance – equal to the difference between the adjusted capitalized cost and the sum of all depreciation and other amortized amounts paid through the date of early termination)	\$33,312.57
"Plus: Accrued but unpaid lease payments	\$4,401.50
"Other unpaid amounts due under the lease agreement including unpaid late charges	\$301.89
"Costs for repossession, storage and reconditioning	\$325.00
"Other costs of sale including costs for transporting and auctioning	\$172.50
"Gross Early Termination Amount/Purchase Price	\$38,513.56
"Security Deposit (will be credited to the amount you owe for early termination or the Purchase Price)	\$0.00"

Soon after receiving the Notice, appellants provided TMCC with a check for approximately \$2,900 and asked it to reinstate the lease contract. TMCC refused to reinstate the loan, sold the vehicle and later demanded that appellants pay the deficiency balance and related costs.

In August 2002, appellants, suing as individuals and on the public's behalf as private attorneys general, brought the present lawsuit against TMCC containing a single cause of action under the UCL. They alleged TMCC, as a motor vehicle lessor under the VLA and a debt collector under the Rosenthal Act, was required before disposing of the vehicle to provide written itemization of its claimed post-repossession costs, but instead of doing so, "lumped together" those charges in violation of the VLA. Appellants alleged TMCC was not entitled to recover any payment from appellants given its failure to comply with the VLA's notice requirements.

Appellants further alleged TMCC's attempt under its faulty notice to collect moneys to which it was not entitled, constituted "unlawful, unfair and/or fraudulent business practices within the meaning of the [UCL], as they are violations of specific provisions of [the Rosenthal Act]." According to the complaint, TMCC's practice of not itemizing post-repossession charges "forced the Lavariases and other members of the general public into a weaker bargaining position in that it obscures the true value of each and every post-repossession charge, making it more difficult to detect and protest any improper charge or even to ascertain whether the charge is owed at all."

TMCC demurred on the ground appellants' complaint failed to state facts sufficient to constitute a cause of action. Its sole two-pronged argument was that its itemization of charges complied with the unambiguous language of the VLA, and that, as a matter of law, the complaint failed in its entirety on that basis. In a footnote, TMCC argued its compliance with the VLA likewise defeated appellants' claim under the

Rosenthal Act. On these grounds, TMCC asserted the action failed in its entirety, and asked the court to sustain its demurrer without leave to amend.

The superior court in a telephonic ruling sustained TMCC's demurrer without leave to amend on the sole ground TMCC's itemization met VLA requirements. In an ensuing hearing, appellants' counsel pointed out to the superior court that TMCC had addressed only the unlawful prong of the UCL; that it had not demurred to the cause of action to the extent it contained a claim that TMCC's practices were deceptive.² In response, TMCC's counsel maintained the demurrer addressed appellants' entire cause of action. Referring the superior court to *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 (*Cel-Tech*), counsel argued TMCC showed it had complied with an "affirmative duty in law," which prevented any finding those practices were deceptive under the UCL.

Following those arguments, the superior court confirmed its telephonic ruling

² Appellants argued below that they had pleaded conduct under two of the three prongs of the UCL in their complaint, the unlawful and fraudulent prongs, and that TMCC did not address the "deceptive" prong in its demurrer. On appeal, appellants additionally argue TMCC's demurrer failed to address the "unfair" prong of the UCL. That appellants may have broadened their argument on appeal is of no concern, since this court must independently review their allegations liberally to determine whether they state a cause of action under *any* possible legal theory, even if raised by appellants for the first time on appeal. (§ 472c; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38 (*Quelimane*); *Smiley v. Citibank* (1995) 11 Cal.4th 138, 146; *Satten v. Webb* (2002) 99 Cal.App.4th 365, 374-375; *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677, 684, fn. 5.)

and thereafter entered judgment in TMCC's favor. Appellants appealed from that judgment, and separately appealed from the court's postjudgment order granting TMCC's motion for attorney fees under the VLA. We consolidated the appeals.

DISCUSSION

I. *Standard of Review*

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citations.]' [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) Plaintiffs bear the burden of proving a reasonable possibility any defects can be cured by amendment. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

Under this standard of review, our inquiry ends and reversal is required once we determine the pleadings have stated a cause of action under any legal theory. (*Genesis Environmental Services v. San Joaquin Valley Unified Air Pollution Control Dist.* (2003) 113 Cal.App.4th 597, 603.)

II. *Applicable Legal Principles*

Our analysis of appellants' complaint and TMCC's demurrer requires that we briefly set out some principles of the UCL and Rosenthal Act.

A. *The Unfair Competition Law*

" '[T]he UCL defines unfair competition as any unlawful, unfair or fraudulent business practice ' [Citations.] A business practice is unlawful 'if it is forbidden by any law ' [Citation.] A business practice, however, may be unfair or fraudulent in violation of the UCL even if the practice does not violate any law. [Citation.]"

(*Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 827 (*Olszewski*).) The statute's disjunctive language establishes three independent varieties of unfair competition. (*Cel-Tech, supra*, 20 Cal.4th at p. 180; *Byars v. SCME Mortg. Bankers* (2003) 109 Cal.App.4th 1134, 1147 (*Byars*).)

Although the UCL's scope has been described as broad and sweeping (*Quelimane, supra*, 19 Cal.4th at p. 42), plaintiffs may not use the UCL to circumvent statutory barriers to relief or challenge conduct that the Legislature clearly permits. (*Cel-Tech, supra*, 20 Cal.4th at pp. 182-183.) In *Cel-Tech*, the California Supreme Court recognized a safe harbor for claims made under the under the unfairness prong of the UCL in those instances where the Legislature expressly allows the challenged acts: " 'If the Legislature has permitted certain conduct or considered a situation and concluded no action should lie, courts may not override that determination. When specific legislation provides a "safe harbor," plaintiffs may not use the general unfair competition law to assault that harbor.' [Citation.] Thus, '[a]cts that the Legislature has determined to be lawful may not

form the basis for an action under the unfair competition law ' [Citation.]

Nonetheless, 'the Legislature's mere failure to prohibit an activity does not prevent a court from finding it unfair.' " (*Olszewski, supra*, 30 Cal.4th at p. 828, quoting *Cel-Tech*. at pp. 182-184; see also *Byars, supra*, 109 Cal.App.4th at p. 1147 [business practice that might otherwise be considered unfair or deceptive cannot be the basis of a Section 17200 cause of action if the conduct has been deemed lawful]; *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1505-1506.)

B. *The Rosenthal Act*

The Rosenthal Act, which governs debt collection practices in California, makes applicable, with few exceptions, the debt collection standards and remedies of the federal Fair Debt Collection Practices Act (15 U.S.C. §§ 1692-1692o). (Civ. Code, §§ 1788.1, 1788.17.) Under the Rosenthal Act, a debt collector³ may not use false, deceptive or misleading representations or means in collecting a debt, including by "the false representation of . . . the character, amount, or legal status of any debt. . . ." (15 U.S.A. § 1692e(2); Civ. Code, § 1788.17.) A debt collector is additionally prohibited from "collecting or attempting to collect . . . the whole or any part of the debt collector's fee or charge for services rendered, or other expense incurred by the debt collector in the collection of the consumer debt, except as permitted by law." (§ 1788.14, subd. (b).)

³ The Rosenthal Act defines a debt collector as "any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection. The term includes any person who composes and sells, or offers to compose and sell, forms, letters, and other collection media used or intended to be used for debt collection, but does not include an attorney or counselor at law." (§ 1788.2, subd. (c).)

Debts subject to the Rosenthal Act are "money, property or their equivalent which is due or owing or alleged to be due or owing from a natural person to another person."

(§ 1788.2, subd. (d).)

III. *The Court Erred by Sustaining TMCC's Demurrer To the Entire Complaint*

Appellants contend, and we agree, the superior court erred in sustaining TMCC's demurrer to appellants' UCL complaint in its entirety. As we explain, while appellants' UCL cause of action is premised in part on TMCC's assertedly insufficient itemization, its complaint, reasonably and liberally construed, also includes allegations that TMCC included in its Notice false, improper or unauthorized charges in violation of the Rosenthal Act, a claim that, as we explain, is not embraced in the safe harbor protections of the UCL. Because TMCC did not separately move to strike appellants' allegations based on improper itemization, the result is that TMCC's demurrer must be overruled.

"Ordinarily, a general demurrer does not lie to a portion of a cause of action, and if any part of a cause of action is properly pleaded, the demurrer will be overruled." (*Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 452, citing *Campbell v. Genshlea* (1919) 180 Cal. 213, 217; see also *PH II v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682; *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 163.) We take a liberal construction of appellants' pleadings in determining whether they have pleaded a cause of action. (Code Civ. Proc., § 452; *Quelimane, supra*, 19 Cal.4th at p. 43, fn. 7.)

Here, liberally construing the complaint and also drawing reasonable inferences from the facts alleged, appellants based their UCL cause of action on more than just

TMCC's failure to itemize post-repossession costs in violation of the VLA. Appellants alleged TMCC violated section 1788.17 of the Rosenthal Act "when they [*sic*] made demands for and/or collected money not due, took actions that could not legally be taken, misrepresented their [*sic*] actions, made false credit reports, and otherwise mischaracterized any alleged debt." Appellants further alleged: "The Defendants', and each of their, attempts to collect moneys to which they were, and/or are not entitled, due to faulty notices under the Vehicle Leasing Act, violates the [UCL] in that attempts to collect moneys not lawfully owed constitutes either unlawful, unfair, and/or fraudulent business practices within the meaning of the [UCL], as they are violations of specific provisions of [the Rosenthal Act]."

Moreover, apart from the Rosenthal Act, appellants set forth a separate allegation that emphasized its cause of action under the UCL did not depend on any statute: "Not only does [TMCC's] violations of specific provisions of the [VLA] and the [Rosenthal Act] constitute unlawful, unfair and/or fraudulent business practices within the meaning of the [UCL], but the [UCL's] liberal proscription of unlawful, unfair and fraudulent business practices extends beyond the specifics of the [VLA] to include, as a separate basis for liability, the general public policy against any and all deceptive business practices, whether or not specific as to statute." We interpret these allegations in the context of the entire pleading as a claim under the fraudulent or unfair prongs of the UCL premised on TMCC's inclusion of false, improper or unauthorized charges in its Notice.

TMCC's sole assertion with respect to these allegations in the superior court – presented in a footnote without authority – was that its itemization of post-repossession

charges, because it met VLA requirements, precluded any claim under the Rosenthal Act.⁴ As evidenced by its further arguments to the superior court, TMCC plainly based its argument on the safe harbor protections of the UCL. Its reliance on this protection, however, is without merit as to appellants' Rosenthal Act allegations and its UCL claim premised on false, improper or unauthorized charges. The UCL's safe harbor provisions apply in instances where the Legislature "clearly permit[s] the conduct." (*Cel-Tech, supra*, 20 Cal.4th at p. 183.) A claim under the Rosenthal Act – based on a theory that TMCC misrepresented the amount of debt in its Notice or included a debt that was not due and owing because it had not been incurred – is distinct from a claim that TMCC did not sufficiently itemize its charges as required by the VLA. Indeed, TMCC could theoretically comply with the itemization requirements of the VLA, but violate the Rosenthal Act or the UCL by nevertheless including in that itemization a false or misleading statement as to the amount of a debt. The UCL's safe harbor protection does not apply to such a claim because the VLA does not expressly permit making false

⁴ TMCC did not argue in its demurrer, and does not argue before us, that these allegations are mere conclusions of fact or law. The superior court did not reach the question of the sufficiency of these particular allegations, and therefore appellants never responded with a showing that they could amend their complaint to state facts entitling them to relief under this statute. Even if we considered these allegations conclusions, based on appellants showing before us in connection with their request for leave to amend – they point us to the fact that TMCC sought to collect from them monies for auctioning expenses when such expenses were not and could not have been incurred, namely, at a time when it had extended to appellants an offer to purchase the vehicle – we would conclude the court abused its discretion by failing to afford appellants an opportunity to amend their pleading to set forth factual allegations revealing TMCC has engaged in such activities.

representations as to the character, amount, or legal status of a debt. (15 U.S.C. § 1692e(2); Civ. Code, § 1788.17; accord, *Schnall v. Hertz Corp.* (2000) 78 Cal.App.4th 1144, 1163 [conduct relating to the imposition of an avoidable charge for an optional service and the amount of that charge, which is lawful under Civil Code section 1936, subdivision (m)(2) and protected by UCL safe harbor provisions, is very different from allegedly deceptive conduct relating to confusing and misleading portions of the rental agreement and rental record which purport to disclose and explain the charge].)

Because the sole basis of TMCC's demurrer was that appellants could not state a UCL cause of action premised on improper itemization under the UCL's safe harbor protections – a question we do not, and need not, address given our ruling on this procedural issue – its demurrer did not reach appellants' claims regarding alleged violations of the Rosenthal Act and the potentially unlawful, fraudulent, or unfair nature of those practices. We do not decide whether these allegations state a cause of action under the Rosenthal Act, because TMCC did not present arguments showing how these particular allegations were insufficient to state such a claim. Nor do we decide whether evidence of TMCC's alleged conduct in fact exists; that question is not before us at this stage of the proceedings. The point is, as we have interpreted appellants' complaint, appellants sought to premise their UCL claim on other conduct that was alleged to be deceptive and also in violation of the Rosenthal Act, and TMCC did not challenge those allegations in its demurrer. The superior court therefore erred in sustaining TMCC's demurrer to the entire UCL cause of action.

IV. *Attorney Fees*

The superior court awarded TMCC attorney fees under the VLA, specifically section 2988.9, which provides in part: "Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a lease contract subject to the provisions of this chapter regardless of whether the action is instituted by the lessor, assignee or lessee." Having concluded the judgment must be reversed, TMCC is no longer a "defendant in whose favor a dismissal is entered" (Code Civ. Proc., § 1032 subd. (a)(4)) nor is it a "defendant as against those plaintiffs who do not recover any relief against that defendant" (*ibid*), and thus it is no longer a prevailing party. We therefore vacate the attorney fee award against appellants.

DISPOSITION

The judgment is reversed and the superior court is directed to enter an order overruling TMCC's demurrer. The order awarding TMCC attorney fees is vacated. Appellants are entitled to their costs on appeal.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P. J.

McINTYRE, J.